

1 THOMAS L. SANSONETTI  
Assistant Attorney General  
2 Environment & Natural Resources Division  
United States Department of Justice  
3 BRADLEY R. O'BRIEN - State Bar No. 189425  
Environmental Enforcement Section  
4 Environment and Natural Resources Division  
United States Department of Justice  
5 301 Howard Street, Suite 1050  
San Francisco, California 94105  
6 Telephone: (415) 744-6484  
Facsimile: (415) 744-6476  
7

8 Attorneys for Plaintiff United States of America

9 BILL LOCKYER  
Attorney General of the State of California  
10 MARY HACKENBRACHT  
Senior Assistant Attorney General  
11 MARILYN H. LEVIN  
Deputy Attorney General  
12 300 South Spring Street, Suite 500  
Los Angeles, California 90013  
13 Telephone: (213) 897-2612  
Facsimile: (213) 894-0141  
14

Attorneys for Plaintiff People of the State of California ex rel.  
15 California Regional Water Quality Control Board, Santa Ana Region

16 IN THE UNITED STATES DISTRICT COURT  
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
18 WESTERN DIVISION  
19

20 UNITED STATES OF AMERICA,  
and PEOPLE OF THE STATE OF  
21 CALIFORNIA, ex rel.  
22 CALIFORNIA REGIONAL  
WATER QUALITY CONTROL  
23 BOARD, SANTA ANA  
REGION,

COMPLAINT

24 PLAINTIFFS,

25 v.

26 ORANGE COUNTY SANITATION  
DISTRICT,  
27

28 DEFENDANT.

1 The United States of America ("United States"), by the authority of  
2 the Attorney General and acting at the request of the Administrator of the  
3 United States Environmental Protection Agency ("EPA"); and the People of  
4 the State of California, ex rel. California Regional Water Quality Control  
5 Board, Santa Ana Region ("State" or "Regional Board")("jointly referred to  
6 as "Plaintiffs"), through the undersigned counsel, hereby allege as follows:

7 NATURE OF ACTION

8 1. This suit is brought by the United States against the Orange  
9 County Sanitation District ("OCSD") pursuant to Section 309 of the Clean  
10 Water Act ("the Act"), 33 U.S.C. § 1319, and seeks [penalties and] injunctive  
11 relief for violations of Section 301 of the Act, 33 U.S.C. § 1311, and  
12 OCSD's National Pollutant Discharge Elimination System ("NPDES")  
13 permit adopted by the Regional Board on September 17, 2004, and issued  
14 by EPA on or about November 1, 2004 ("OCSD's Permit"). This suit is  
15 brought by the Regional Board against OCSD pursuant to Sections 13385  
16 and 13386 of the California Water Code ("Water Code") and seeks penalties  
17 and injunctive relief for violations of Water Code Section 13376 and  
18 OCSD's Permit issued pursuant to Water Code Section 13377.

19 JURISDICTION, VENUE, AND NOTICE

20 2. This Court has jurisdiction over the parties to and the subject  
21 matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a), 1367,  
22 and 33 U.S.C. §1319(b).

23 3. Venue is proper in this judicial district, pursuant to  
24 28 U.S.C. §§ 1391(b), (c), and 1395(a), and 33 U.S.C. §1319(b), and Water  
25 Code Section 13361, because the transactions and events giving rise to this  
26 action occurred in this district and OCSD is located here.

27 4. EPA has provided notice of the commencement of this action  
28 to the State of California, through the Regional Board, pursuant to Section

1 309(b) of the Act, 33 U.S.C. § 1319(b). The Regional Board has been  
2 joined as co-plaintiff and has filed this action in accordance with Section  
3 309(e) of the Act, 33 U.S.C. § 1319(e).

4 ORANGE COUNTY SANITATION DISTRICT

5 5. OCSD is a political subdivision of the State under Water Code  
6 Section 13050(c) and is regulated as a “person” under the Act as defined by  
7 Section 502(5) of the Act, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2.

8 STATUTORY BACKGROUND

9 6. Section 301 of the Act, 33 U.S.C. § 1311, prohibits discharges  
10 of pollutants except in accordance with that Section and, inter alia, Section  
11 402 of the Act, 33 U.S.C. § 1342.

12 7. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines  
13 “pollutant” broadly to cover a wide range of materials and specifically  
14 includes “solid waste,” “sewage,” and “garbage.”

15 8. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines  
16 “discharge of a pollutant” to mean, inter alia, the addition of any pollutant to  
17 “navigable waters from any point source.”

18 9. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines  
19 “navigable waters” to mean “the waters of the United States, including the  
20 territorial seas.”

21 10. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines  
22 “point source” to mean, inter alia, “any discernible, confined and discrete  
23 conveyance, including but not limited to any pipe, ditch, channel, tunnel,  
24 conduit, well, [or] discrete fissure . . . from which pollutants are or may be  
25 discharged.”

26 11. Section 402 of the Act, 33 U.S.C. § 1342, establishes the  
27 NPDES program under which authorized states may issue permits  
28 governing the discharge of pollutants from regulated sources. The State,

1 through its several Regional Water Quality Control Boards, has in place an  
2 EPA-approved NPDES program.

3 12. 40 C.F.R. § 403.3 defines a “publicly-owned treatment works”  
4 (“POTW”) as a treatment works owned by a state or municipality, including  
5 any facilities that store, treat, recycle, or reclaim municipal sewage or liquid  
6 industrial wastes. It also includes sewers, pipes, and other conveyances if  
7 used to convey waste water to a publicly-owned treatment works.

8 13. The Act regulates publicly-owned treatment works under, inter  
9 alia, the regulations at 40 C.F.R. Part 122, which implement the NPDES  
10 permit program.

11 14. Pursuant to Section 309(a)(3) of the Act,  
12 33 U.S.C. § 1319(a)(3), whenever any person is found to be in violation of,  
13 inter alia, Section 301 of the Act, 33 U.S.C. § 1311, or any condition or  
14 limitation contained in a permit issued under Section 402 of the Act,  
15 33 U.S.C. § 1342, EPA may issue an administrative order requiring  
16 compliance or EPA may authorize suit in federal district court, pursuant to  
17 Section 309(b) of the Act, 33 U.S.C. § 1319(b).

18 15. Pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b),  
19 EPA may bring suit for appropriate relief, including a temporary or  
20 permanent injunction, for any violation for which EPA could issue an  
21 administrative order pursuant to Section 309(a), 33 U.S.C. § 1319(a). Such  
22 injunctive relief may include an order restraining the violator from further  
23 violations or compelling the violator to comply with the Act.

24 16. Water Code Section 13376 prohibits the discharge of pollutants  
25 or the operation of a publicly owned treatment works by any person except  
26 as authorized by Waste Discharge Requirements. Waste Discharge  
27 Requirements are a State equivalent to NPDES permits. Pursuant to Water  
28 Code Section 13373, the terms “navigable waters,” “pollutants,” and

1 “discharge” in state programs have the same meanings as implemented in  
2 the Act. A “person” is defined by Water Code Section 13050(c) to include a  
3 political subdivision of the State.

4 17. Under Water Code Section 13361, the California Attorney  
5 General is authorized to bring a civil action at the request of the Regional  
6 Board enforcing the provisions of division seven of the Water Code (known  
7 as the Porter-Cologne Water Quality Control Act).

8 18. Water Code Section 13385(h) provides that, upon request of  
9 the Regional Board, the California Attorney General shall petition the  
10 appropriate court to collect civil penalties appropriate under that section.  
11 Pursuant to Water Code Section 13386, the California Attorney General, at  
12 the request of the Regional Board, is authorized to petition the appropriate  
13 court for an injunction restraining the violation of the requirements of  
14 paragraphs (1) through (6) of Water Code Section 13385, subdivision (a),  
15 including violation of a Waste Discharge Requirement.

#### 16 GENERAL ALLEGATIONS

17 19. OCSD operates a wastewater collection, conveyance,  
18 treatment, and disposal system, which treats in excess of 200 million gallons  
19 per day (“mgd”) of wastewater at its Reclamation Plant No. 1 in Fountain  
20 Valley, California, and its Treatment Plant No. 2 in Huntington Beach,  
21 California. OCSD’s wastewater collection, conveyance, treatment, and  
22 disposal system (collectively, “OCSD POTW system”) includes  
23 approximately 650 miles of collection system lines and 19 pump stations  
24 and serves approximately 21 Orange County cities. The OCSD POTW  
25 system is a publicly-owned treatment works within the meaning of 40  
26 C.F.R. Part 122 and 40 C.F.R. § 403.3.

27 20. The OCSD POTW system treats in excess of 200 mgd of  
28 sewage to the advanced primary treatment level. Of that amount, OCSD

1 further treats in excess of 100 mgd of sewage to the secondary treatment  
2 level. OCSD discharges the advanced primary or secondary effluent  
3 through its offshore outfall into the waters of the Pacific Ocean. OCSD's  
4 discharge of the effluent from the OCSD POTW system into the waters of  
5 the Pacific Ocean constitutes the discharge of a pollutant to navigable  
6 waters from a point source within the meaning of Sections 301, 502(6), (7),  
7 (12), and (14) of the Act, 33 U.S.C. §§ 1311, 1362(6), (7), (12), and (14);  
8 and Water Code Section 13376.

9 21. In 1998, EPA and the Regional Board jointly issued to OCSD a  
10 modified NPDES permit that provided OCSD a modification, pursuant to  
11 Section 301(h) of the Act, 33 U.S.C. § 1311(h), from meeting certain  
12 secondary treatment requirements with respect to OCSD's discharge.

13 22. The OCSD Board of Directors, by resolution No. OCSD 02-14,  
14 dated July 17, 2002, adopted a policy to treat OCSD's wastewater  
15 discharges to meet secondary treatment requirements and, in December  
16 2002, applied to EPA and the Regional Board for a revised NPDES permit  
17 that did not include a waiver pursuant to Section 301(h) of the Act,  
18 33 U.S.C. § 1311(h).

19 23. On September 17, 2004, the Regional Board adopted OCSD's  
20 Permit. OCSD's Permit was issued by EPA and became effective on or  
21 about November 1, 2004. OCSD's Permit does not include a modification  
22 from the secondary treatment requirements with respect to OCSD's  
23 discharge. Instead the Permit requires OCSD to be in compliance with all  
24 secondary treatment requirements, including those secondary treatment  
25 requirements relating to biochemical oxygen demand ("BOD") and total  
26 suspended solids ("TSS").

27 CLAIM FOR RELIEF

28 24. Plaintiffs incorporate by reference the allegations contained in

1 Paragraphs 1 through 23 as set forth fully below.

2 25. OCSD has and continues to discharge wastewater containing  
3 sewage that does not meet the secondary treatment requirements from the  
4 OCSD POTW system through its offshore outfall into the waters of the  
5 Pacific Ocean. OCSD's discharge does not meet the OCSD Permit  
6 requirements for BOD and TSS.

7 26. OCSD's discharge of wastewater containing sewage that has  
8 not been subject to secondary treatment from the OCSD POTW system into  
9 the waters of the Pacific Ocean is in violation of the Act, OCSD's Permit,  
10 and the Water Code.

11 27. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d),  
12 OCSD is liable for civil penalties of up to \$27,500 per day for each day of  
13 each violation. Under Water Code Section 13385, OCSD is liable for civil  
14 penalties of up to \$25,000 per day for each day of violation.

15 28. Unless enjoined by an order of the Court, OCSD will continue  
16 to violate the Act, OCSD's Permit, and the Water Code, including Water  
17 Code Section 13376. Pursuant to Section 309(b) of the Act, 33 U.S.C.  
18 § 1319(b), and Water Code Section 13386

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiffs United States and the Regional Board  
21 respectfully request that the Court:

22 1. Assess civil penalties against OCSD pursuant to Section  
23 309(d) of the Act, 33 U.S.C. § 1319(d), of up to \$27,500 per day for each  
24 day of each violation of the Act, and up to \$25,000 per day pursuant to  
25 Water Code Section 13385 for each day of each violation;

26 2. Permanently enjoin OCSD pursuant to Section 309(b) of  
27 the Act, 33 U.S.C. § 1319(b), and Water Code Section 13386 to take all  
28 measures necessary to achieve compliance with the Act, OCSD's Permit,

1 and the Water Code;

2 3. Award the United States and the Regional Board their  
3 costs in this action; and

4 4. Grant such further relief as may be appropriate.  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY signs this Complaint in the matter of United  
2 States v. Orange County Sanitation District.

3  
4 FOR THE UNITED STATES OF AMERICA:

5  
6  
7  
8  
9 \_\_\_\_\_  
10 THOMAS L. SANSONETTI, ESQ.  
11 Assistant Attorney General  
12 Environment and Natural Resources  
13 Division  
14 United States Department of Justice  
15 Washington, DC 20530

10.26.04

Dated

16  
17 \_\_\_\_\_  
18 BRADLEY O'BRIEN, ESQ.  
19 Environmental Enforcement Section  
20 Environment and Natural Resources  
21 Division  
22 United States Department of Justice  
23 301 Howard Street, Suite 1050  
24 San Francisco, California 94105

Dated

1 THE UNDERSIGNED PARTY signs this Complaint in the matter of United  
2 States v. Orange County Sanitation District.

3  
4 FOR THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel.  
5 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
6 SANTA ANA REGION:

7  
8 BILL LOCKYER  
9 Attorney General of the State of California

10  
11  
12 MARILYN H. LEVIN  
13 Deputy Attorney General  
14 300 South Spring Street  
15 11<sup>th</sup> Floor, North Tower  
16 Los Angeles, California 90013

\_\_\_\_\_  
Dated

17 Attorneys for Plaintiff People of the  
18 State of California, ex rel. California  
19 Regional Water Quality Control Board,  
20 Los Angeles Region  
21  
22  
23  
24  
25  
26  
27  
28